

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TYRONE H. DAVIS, )  
vs. Plaintiff, )  
DONALD FRANCIS, )  
GEORGE SAMPLE, and )  
JOHN DOES 1 through 5, )  
Defendants. ) Case No. 07-cv-0693-MJR

MEMORANDUM and ORDER

REAGAN, District Judge:

This *Bivens* action alleges that various correctional officials at USP-Marion violated Tyrone Davis' federally-secured constitutional rights in October 2005. By prior Order, one named Defendant (the Bureau of Prisons or BOP) and two counts of the complaint were dismissed, leaving Davis' claims against two named correctional officers – Donald Francis and George Sample – plus five unnamed "John Doe" Defendants.<sup>1</sup>

Francis and Sample separately moved for summary judgment,

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<sup>1</sup>

Because service was never made on John Does 1 - 5, the Court notified Plaintiff that they would be dismissed for want of prosecution unless action was taken by October 26, 2009. On October 27, 2009, Plaintiff moved the Court to order the BOP to identify the five Defendants and order the Marshals Service to serve them. That motion is before Magistrate Judge Clifford J. Proud, and a ruling is expected shortly.

Davis responded to both motions, and the Honorable Clifford J. Proud, United States Magistrate Judge, held an evidentiary hearing in late August 2009. Following the hearing, Judge Proud submitted a Report and Recommendation, concluding that Defendants had failed to sustain their burden, and both motions should be denied. Timely objections were filed, so the undersigned District Judge conducted de novo review pursuant to 28 U.S.C. § 636(b)(1)(B), Federal Rule of Civil Procedure 72(b), and Southern District of Illinois Local Rule 73.1(b).

In an 18-page Order entered October 14, 2009, the undersigned Judge thoroughly delineated the applicable legal standards, summarized the evidence, analyzed the issues, and recommitted the matter to Magistrate Judge Proud to clarify one aspect of his conclusion. Specifically, the Court asked Judge Proud to make an explicit credibility determination as to Plaintiff's testimony regarding efforts to exhaust his administrative remedies.

Judge Proud did so via Supplemental Report and Recommendation on November 17, 2009 (Doc. 69). That Report supplies the specific findings (crediting Plaintiff's testimony at the evidentiary hearing) which buttress Judge Proud's conclusion that Defendants' summary judgment motions merit denial. The undersigned Judge discussed all these issues at length in the detailed October 14, 2009 Order (Doc. 65) and need not repeat that discussion here.

The period for objecting to the Supplemental Report has expired,

and no party filed objections or sought additional time in which to do so. Therefore, pursuant to **28 U.S.C. § 636(b)**, this Court need not conduct *de novo* review. ***Thomas v. Arn, 474 U.S. 140, 149-52 (1985); Video Views Inc., v. Studio 21, Ltd., 797 F.2d 538 (7th Cir. 1986).***

Accordingly, the undersigned District Judge **ADOPTS in its entirety** Judge Proud's Supplemental Report and Recommendation (Doc. 69) (which further explains and supports the recommendations contained in the original Report and Recommendation, Doc. 60) and **DENIES** Defendants' summary judgment motions (Docs. 31 & 45). The only remaining motions, filed by Plaintiff within the past six weeks (Docs. 67, 68 & 70), will be ruled on by Judge Proud.

IT IS SO ORDERED.

DATED December 11, 2009.

s/ Michael J. Reagan  
United States District Judge  
Southern District of Illinois